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ABSTRACT

This guide to the Nevada Mediation System for Early Intervention and Special Education is intended to assist families, school districts, and state agencies in resolving disputes regarding the provision of appropriate early intervention or special education and related services to children with disabilities. First, the mediation process is explained and the value of mediation in improving cooperation between parents and the agency is stressed. Appointment of the mediator and appropriate participants in the mediation are considered next. Mediation is seen as a voluntary dispute resolution process and as an alternative and not a prerequisite to a due process proceeding. An outline of the mediation process, including the mediator's role in the initial contact and responsibilities of all parties during the mediation session, is provided. Principles of mediation are listed, such as: "the mediator has no authority to compel any action by either party," and "the only record kept of the mediation is a Mediation Agreement." Other aspects briefly considered include the role of the Nevada Departments of Education and Human Resources, accessing the mediation process, payment of mediators, and local mediation efforts. Attachments include relevant forms such as the Mediation Agreement, request for postponement of the due process hearing, and the mediator appointment letter. (DB)

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NEVADA MEDIATION SYSTEM

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PREFACE

The Nevada Departments of Education and Human Resources have developed the Nevada Mediation System for Early Intervention and Special Education to assist families, school districts or state agencies in resolving disputes regarding the provision of appropriate early intervention or special education and related services to children with disabilities in Nevada.

WHAT IS MEDIATION?

Mediation is a voluntary process that brings together the parties to a dispute and an impartial third party (a mediator) in an attempt to resolve the dispute through a structured, yet informal, meeting.

Mediation, as utilized in early intervention or special education, refers to the bringing together of the parents of a child with a disability and school district or state agency officials to resolve disputes regarding any and all aspects of the child's early intervention or special education program.

Since mediation is a process, it has structure. It has a beginning, a middle and an end. It has specific rules that must be adhered to. In mediation, neither party is asked to abandon basic beliefs about the child's ability or potential but rather the parties are asked to consider alternatives which could be incorporated into the child's program, to be realistic about both the child's capabilities, and the local district or agency's obligations and resources.

Mediation often results in a written agreement, formulated and agreed to by all parties which negates the need for any further hearings or litigation. Mediations which do not result in written agreements still may be considered successful to the extent that they:

(1) develop in each party a respect for the other party's opinions and beliefs;
(2) promote a clear understanding of the issues in each case;
(3) clarify points of agreement as well as areas of continued disagreement;
(4) promote and encourage an atmosphere of rational discussion; and
(5) repair damaged relationships for the future.

WHY HAVE MEDIATION?

Services for children are always enhanced by the close cooperation of the parents and the agency in that process. Through the Individuals with Disabilities Education Act (IDEA) families have become essential partners in planning programs for their children. To protect parent rights as well as the rights of districts and agencies, IDEA contains provisions for a due process hearing should either party disagree regarding a child's early intervention or special education program.

Mediation is an alternative to the due process hearing and may eliminate or greatly decrease many of the adverse experiences associated with a hearing. Mediation can reduce the need for legal assistance and resolve disputes in a more timely manner. Mediation may also be accessed after a request has been made for hearing. Mediation encourages mutual respect and promotes communication which not only

diminishes polarization, but facilitates understanding and collaboration. Mediation provides training opportunities for parents and service providers to use conflict resolution techniques more effectively.

WHO IS INVOLVED IN MEDIATION?

Mediators are the essential catalyst of any mediation system. They must be impartial, be able to convey their impartiality and promote positive communication between disputing parties. The mediator will be appointed based on several factors which include:

A. Geographic location on a rotating basis when possible.
B. Absence of any conflict of interest.
C. Special talents, expertise, or knowledge of the mediator.
D. The issues involved in the mediation.
E. Schedules and/or other commitments of the mediator.

Family members and/or representatives of the family, and the agency/school district participate in the mediation. The number of participants for each party shall generally be limited to three persons. Mediation participants for both parties *must* include persons who have the authority to act on behalf of the child and local district or agency, respectively; and have direct knowledge and/or involvement with the child. When appropriate for older children, their attendance will be considered on a case-by-case basis.

WHEN IS MEDIATION USED?

Mediation is a voluntary dispute resolution process. As such, mediation may only be utilized when both parties to a dispute agree to use this process. Mediation can never be used as a necessary preliminary step prior to any other administrative or legal recourse.

Mediation may be initiated in cases in which no hearing has been requested, but in which the two parties are in disagreement. Mediation may also be utilized after a due process hearing request has been initiated as long as both parties agree. However, mediation should generally occur at least ten (10) days prior to the hearing.

Vital to the child's interest is the spirit and attitude with which the local district or agency and the parents approach any real or apparent conflict. Due process hearings may be necessary to bring finality to disputes. However, they are often unsuccessful in resolving the "real issue." Because hearings can be adversarial proceedings, parties may be forced into "black and white" positions while privately the parties may admit that the areas in dispute are "gray."

In an attempt to provide parents and local districts or agencies a less formal forum for resolving disputes, the Nevada Departments of Education and Human Resources have trained mediators available to assist in dispute resolution.

Mediation as used in Nevada, will be an alternative and not a prerequisite to the initiation of a due process proceeding. Mediation cannot be used to delay the right to a hearing, although both parties may request the hearing officer to postpone the hearing, pending efforts at other forums for resolution (i.e., mediation). (See Attachment A for sample of the Request for Postponement of Due Process Hearing).

Generally, the following types of cases are appropriate for mediation:

1. When the major problem is broken lines of communication;
2. When there is insufficient information on one or both sides;
3. When there is noncompliance with statutes, regulations or procedures;
4. When there is a basic level of trust and good faith between parties in the dispute;
5. When private school placement is not an issue;
6. When there is not a negative past history; or
7. When the local district or agency can prove its ability to implement the Individualized Educational Plan (IEP), or the Individualized Family Service Plan (IFSP).

HOW DOES MEDIATION WORK?

Mediation is informal, and yet structured. It is informal so that an open, "good faith" attempt at resolving differences, in the presence and with the management of an impartial third party, can be attempted. It is structured so that communication can be guided towards constructive interaction with a view to agreement, clarification of issues, and well-informed decisions.

The mediator is not a decision-maker. The mediator manages and facilitates the process, summarizes positions, clarifies issues of law and regulation, offers alternatives, and provides opportunities for confidential, separate meetings with each party to the dispute (caucus).

If an agreement is reached, it will be documented in writing. Agreements are "good faith" documents and become legally binding when incorporated in the IEP/IFSP. If agreement is not or cannot be reached, parties may need to proceed to a due process hearing.

Insofar as mediation can, at a minimum, lead to better-informed decisions or assist parties in understanding one another's position, it is always successful.

The following is an outline of the mediation process:

1. **Initial Contact**

   The mediator:

   a. describes the process;
   b. differentiates the mediation from the due process hearing;
   c. stresses impartiality;
   d. explains that other parties may also be contacted;
   e. determines who should attend; it is essential that a person with decision-making authority represent each party and that both sides come to the mediation prepared to make decisions, not postpone them;
   f. arranges the date, time and location of the session; and,
   g. explores the parties' perceptions of the dispute in question, and elicits pertinent facts.

2. **The Mediation Session**

   a. All parties make a commitment to set aside at least two hours of uninterrupted time.
   b. Mediator makes introductory remarks.
   c. Both parties will have an opportunity to make an UNINTERRUPTED STATEMENT within time limits specified by the mediator.
   d. Establish an understanding of the nature of the disagreement(s).
   e. Determine points of agreement.
   f. Offer suggestions or proposals for resolution of the disagreement(s).
   g. A signed written agreement will result if the mediation is successful. Agreements become legally binding when they are incorporated legally into the child's IEP or IFSP.
   h. Mediation is voluntary and any party to it can call a halt at any time.
   i. If agreement is reached, set a date for an IEP or IFSP meeting.
   j. If the disagreement(s) cannot be resolved, refer both parties to the appropriate department regarding procedures for initiating a due process hearing.

PRINCIPLES OF MEDIATION

1. The mediator is an impartial third party;
2. The mediator has no authority to compel any action by either party;
3. Mediation requires the full participation of both parties and can only begin or continue as parties may agree;
4. The only record that will be kept of the mediation is a Mediation Agreement which includes a listing of participants and the date(s), time(s), and location(s)

of the mediation session(s) and a date for the IEP/IFSP meeting; a record of the discussions will not be maintained;

5. Efforts to mediate the disagreement(s) will not be admissible as evidence at a due process hearing except for the purpose of noting the mediation did occur and the terms of any agreement(s) which were reached as a result of the mediation;
6. When, in the opinion of the mediator or either party to the mediation, no resolution of the disagreement(s) is forthcoming, the mediator shall terminate the mediation;
7. The number of participants for each party shall generally be limited to three (3) persons;
8. Mediation participants for both parties must include persons who have the authority to act on behalf of the child and local district or agency respectively;
9. From the time of initiation, mediation generally should be conducted within a period of twenty-one (21) calendar days but could be extended by mutual agreement of all parties;
10. The mediator will chair the mediation and assure that it is convened in a timely fashion with due regard to the rights and responsibilities of all parties to the mediation;
11. If, because of the time constraints brought on by an upcoming hearing, both parties wish to postpone the due process hearing in order to attempt mediation, a postponement must be requested of the hearing officer; and
12. If an agreement is reached in a case in which a hearing has been scheduled, part of the written agreement should be an agreement to withdraw the hearing request, after the agreement is incorporated into the child's IEP/IFSP.

WHAT IS THE ROLE OF THE DEPARTMENTS OF EDUCATION AND HUMAN RESOURCES?

The Nevada Departments of Education and Human Resources will select and train mediators for mediations throughout the state. The Departments will supervise the mediation process and the conduct of mediators.

Each department will appoint a professional staff member to coordinate all activities concerning mediation. He or she will:

- act as a resource for mediation information;
- appoint mediators;
- provide information regarding mediation to interested groups and individuals;
- keep a confidential copy of all mediation agreements on file;
- update mediators on best practices.

Each department will act as the final authority on the suitability of cases for mediation. The following circumstances will generally render a dispute not suitable for mediation:

1. The request is too close to the date of the hearing.
2. A school board's official action, e.g., expulsion, policy, etc., is the point of dispute.
3. Any party to the dispute does not wish to mediate.
4. Implementation of a hearing officer's decision is the matter of dispute.

Additionally, each department will scrutinize requests for mediation in which information is received which leads the department to believe that either party's position is absolute.

HOW IS MEDIATION ACCESSED?

1. Parents or district/agency representatives request a mediation by calling:
   a) Department of Education for children 3 through 21 years of age.
   b) Department of Human Resources for children birth through two years of age.
2. Mediation coordinator establishes the specific nature of the disagreement(s).
3. The mediation coordinator will contact the other party to ascertain willingness to participate.
4. If the mediation coordinator determines, after discussing the issues with each party, that the case can be mediated, the coordinator appoints a mediator.
5. If the mediation coordinator determines that the case cannot be mediated based upon the criteria, he or she informs the parties of the due process system and how to access it.

PAYMENT OF MEDIATORS

The school district or agency agreeing to participate in mediation will reimburse the mediator for time and actual expenses or, if necessary, request assistance from the Nevada Departments of Education or Human Resources. Mediators are impartial. Mediators who receive reimbursement from any agency shall not be construed as biased or having conflict of interest.

LOCAL MEDIATION EFFORTS

Local school districts or agencies are encouraged to mediate disputes or resolve conflicts without accessing or prior to accessing the Nevada Mediation System for Early Intervention and Special Education. This system is in no way intended to usurp or supersede the right or the responsibility of local districts or agencies to resolve disputes without state assistance or intervention.

ATTACHMENT A

REQUEST FOR POSTPONEMENT OF DUE PROCESS HEARING

Date: _____

To: _____
(Hearing Officer)

The parties below agree to the postponement of the Due Process Hearing requested, on behalf of _____
(Child)
on _____.
(Date of due process request)

The postponement request is effective from _____ and will continue for a
(Date)
period up to twenty-one (21) days or until the mediation process has been completed, whichever is sooner.

_____	_____
District/Agency Representative	Parent(s)
_____	_____
District/Agency Representative	Parent(s)
_____	_____
Date	Date

ATTACHMENT B

DUE PROCESS HEARING WITHDRAWAL REQUEST

Because of an agreement reached through mediation between

_____ and the parent(s) of
(District/Agency)

_____, withdraw the request for a due process
(Child)

hearing at this time.

We have been informed of our rights to request a hearing in the future.

_____
Signature of Petitioner

_____
Title

_____
Date

ATTACHMENT C

MEDIATION AGREEMENT(*)

Child's Name _____

Birth Date _____ Sex _____

Parent's Name _____

Address _____

City _____ Zip Code _____

School District/Agency _____

Address _____

City _____ Zip Code _____

Mediator_____ Date of Mediation _____

Participants (list name and title or relationship to child)

_____

_____

_____

AGREEMENT

Date to reconvene IEP or IFSP Committee to incorporate agreement_____

_____ _____
Parent(s) Signature District/Agency Representative

_____ _____
Parent(s) Signature District/Agency Representative

_____ _____
Date Date

(*) Attach handwritten agreement with each page numbered and initialed by participants and mediator.

MEDIATION AGREEMENT

Child's Name: _____

District/Agency Name: _____

Initials:

Date:

ATTACHMENT D

MEDIATOR APPOINTMENT LETTER

Nevada Departments of Education or Human Resources

Dear _____:

This agency has appointed _____as a mediator in the dispute regarding the early intervention or special education program of _____. The mediator will be contacting you shortly to arrange for a mutually agreeable time and place for the mediation.

Prior to convening the mediation, the mediator will collect the signed Mediator Release form from both parties. The purpose of the release form is to ensure that the mediator will not be called as a witness in a due process hearing which might be held as a result of this dispute, if this mediation fails. This is an important consideration; and it is necessary so that we might assure ourselves that the mediation process and/or the mediator not be used by either disputing party to gain some advantage for the local due process hearing.

Enclosed you will find a copy of the Principles of Mediation. The mediator will be able to more fully explain any portion of the principles when he or she contacts you. The mediator makes the final decision on who can be present during the mediation. Any deviation from these policies must be requested of the mediator in advance of the mediation.

If you have further concerns regarding this matter, please feel free to contact me at _____.

Sincerely,

Mediation Coordinator

cc:
Enclosures

ATTACHMENT E

PRINCIPLES OF MEDIATION

Nevada's mediation system for early intervention and special education is designed as a means of resolving disagreements regarding the appropriateness of the provision of early intervention/special education and related services to children enrolled in Nevada's public schools or state agencies. This service is administered and supervised by the Nevada Departments of Education and Human Resources.

In mediation, neither party is asked to abandon basic beliefs about the child's ability but rather the parties are asked to consider alternatives which could be incorporated into the child's program, and to be realistic about both the child's capabilities and the local district's or agency's obligations and resources.

The mediator will:

1) establish an understanding of the nature of the disagreement(s);
2) determine points of agreement;
3) offer suggestions or proposals for resolution of the disagreement(s);
4) if the disagreement(s) cannot be resolved, the mediator will refer both parties to the appropriate department regarding procedures for initiating a due process hearing.

The following principles apply to this mediation service:

1. The mediator is an impartial third party;
2. The mediator has no authority to compel any action by either party;
3. Mediation requires the full participation of both parties and can only begin or continue as parties may agree;
4. The only record that will be kept of the mediation is a Mediation Agreement which includes a listing of participants and the date(s), time(s), and location(s) of the mediation session(s) and a summary of the outcome; a record of the discussions will not be maintained;

5. Efforts to mediate the disagreement(s) will not be admissible as evidence at a due process hearing except for the purpose of noting the mediation did occur and the terms of any agreement(s) which were reached as a result of the mediation;
6. When, in the opinion of the mediator or either party to the mediation, no resolution of the disagreement(s) is forthcoming, the mediator shall terminate the mediation;
7. The number of participants for each party shall generally be limited to three (3) persons;
8. Mediation participants for both parties must include persons who have the authority to act on behalf of the child and local district or agency respectively;
9. From the time of initiation, mediation generally should be conducted within a period of twenty-one (21) calendar days but could be extended by mutual agreement of all parties;
10. The mediator will chair the mediation and assure that it is convened in a timely fashion with due regard to the rights and responsibilities of all parties to the mediation;
11. If, because of the time constraints brought on by an upcoming hearing, both parties wish to postpone the due process hearing in order to attempt mediation, a postponement must be requested of the hearing officer; and
12. If an agreement is reached in a case in which a hearing has been scheduled, part of the written agreement should be an agreement to withdraw the hearing request, after the agreement is incorporated into the child's IEP/IFSP.

ATTACHMENT F

MEDIATOR RELEASE

Mediator's Name _____

Since the mediator is not a party to this action, has no independent knowledge or expertise as to this cause and, in order to preserve the integrity of and confidence in the mediation process, the parties below waive any and all right(s) that they may have to compel the mediator in this proceeding to appear at any subsequent proceedings on the issues that are a subject matter of the mediation.

_____
Parents

_____
District/Agency Representative

_____
Date